

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIKE, INC.,

Plaintiff,

-v-

BY KIY LLC and NICKWON ARVINGER,

Defendants.

CIVIL ACTION NO. 23 Civ. 2431 (VM) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

Pursuant to the telephonic discovery conference held today, November 17, 2023 (the “Conference”), the Court orders as follows:

1. Plaintiff’s request to reopen the deposition of Defendant Nickwon Arvinger to question him regarding his personal assets (ECF No. 172 at 1) is GRANTED. The Court finds that defense counsel’s instructions to Mr. Arvinger not to answer questions on this topic on relevancy grounds was improper, as “[a]n objection at the time of examination . . . must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection.” Fed. R. Civ. P. 30(c)(2). Further, “[I]ack of relevancy is not a proper ground for instructing a witness not to answer deposition questions.” Luc Vets Diamant v. Akush, No. 05 Civ. 2934 (WHP), 2006 WL 258293, at *1 (S.D.N.Y. Feb. 3, 2006). The Court also finds that the testimony sought is relevant to, inter alia, Plaintiff’s claims based on testimony supporting that Mr. Arvinger may have commingled his personal funds with those of Defendant By Kiy LLC (“By Kiy”).

2. Accordingly, Mr. Arvinger's deposition is reopened for the limited purpose of answering questions regarding his personal assets, and shall be limited to 90 minutes of on-the-record time, exclusive of breaks and other interruptions.
3. Fact discovery remains closed apart from Mr. Arvinger's reopened deposition.
4. The deadline for completion of expert discovery remains **November 29, 2023**. (ECF No. 177). By **December 4, 2023**, the parties shall file a joint letter on the docket certifying that all discovery is complete.
5. Plaintiff's request to compel By Kiy to make available its expert witnesses for deposition (ECF No. 184) is DENIED WITHOUT PREJUDICE. As discussed at the Conference, however, the parties must complete expert depositions by the expert discovery deadline.
6. Any party may order a transcript of the Conference by completing the annexed transcript request form and submitting it to etranscripts@nysd.uscourts.gov.
7. The Clerk of Court is respectfully directed to close ECF No. 184.

Dated: New York, New York
November 17, 2023

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge

Request for the production of a transcript from an electronic recording

Send one request per completed form to:

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Transcripts from an electronic record are generated by a Court Approved Transcriber, NOT the Southern District Court Reporters. The transcript will be delivered to your office and you will be invoiced directly by the transcriber. Submission of this form constitutes an agreement to pay for the transcription services described herein. This form should not be submitted for the purpose of obtaining a price estimate.

NOTE: CJA requests require prior approval by submitting an Auth-24 document in the CJA eVoucher System. If granted, the attorney then submits the etranscripts order form (indicate CJA Request). Upon notification from the transcriber, the attorney will create a CJA 24 Voucher in the eVoucher system.

Today's Date: _____

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